

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3

4 UNITED STATES OF AMERICA,

No. CR 12-792 YGR

5 Plaintiff,

**ORDER RE: DISCOVERY  
RELATED TO JURY  
SELECTION AND SERVICE  
ACT**

6 v.  
7 HENRY CERVANTES, et al.

Re: Dkt. No. 741

8 Defendants.

9 \_\_\_\_\_ /  
10

11 On October 5, 2015, defendant Henry Cervantes<sup>1</sup> filed a single motion: (1) to find Violation  
12 of Jury Selection and Service Act and Deprivation of Due Process and Equal Protection Rights to  
13 Address a Fair Cross-Section Attack on the Indicting Grand Jury; (2) to find that Historical Grand  
14 Jury Records Indicate a Deprivation of a Fair Cross-section; and (3) for Timely Order for  
15 Disclosure of Current Jury Records. (Dkt. No. 741.) The government opposes the motion,  
16 arguing, in part, that H. Cervantes previously was provided discovery relating to the composition  
17 of the Grand Jury sitting in January 2014. (See Dkt. No. 768.) Having considered the parties'  
18 filings, and good cause appearing, the Court **GRANTS IN PART** and **DENIES IN PART** the motion,  
19 finding as follows:

20 As the government accurately documents, H. Cervantes was previously provided with  
21 discovery relating to the composition of the Grand Jury sitting in January 2014. (See Dkt. No. 768  
22 at 2-3.) That Grand Jury was chosen from a 2011 jury wheel and returned the Second Superseding  
23 Indictment. However, since that time, the government sought and the Grand Jury returned the  
24 Third Superseding Indictment. To the extent this Grand Jury was chosen from a 2013 jury wheel,  
25 defendant H. Cervantes is entitled to the same types of materials that the Court previously ordered

26  
27 <sup>1</sup> Alberto Larez and Jaime Cervantes join in H. Cervantes's motion. (See Dkt. Nos. 745,  
28 751.)

1 transmitted to him (*see* Dkt. No. 517) that relate to the Third Superseding Indictment Grand Jury.  
2 *See Test v. United States*, 420 U.S. 28, 30 (1975). The request for updated materials is **GRANTED**.

3 In light of this order of further discovery, and because H. Cervantes has not otherwise  
4 shown “substantial failure to comply” with the Jury Selection and Service Act or deprivation of his  
5 Due Process or Equal Protection rights, the Court **DENIES** H. Cervantes’s motion to the extent he  
6 seeks a stay of proceedings (*see* Dkt. No. 741 at 9–10). 28 U.S.C. § 1867(a) (“In criminal cases, . . .  
7 . the defendant may move to dismiss the indictment or stay the proceedings against him on the  
8 ground of substantial failure to comply with the provisions of this title in selecting the grand or  
9 petit jury.”); *United States v. Hernandez-Estrada*, 749 F.3d 1154, 1159 (9th Cir. 2014) (en banc)  
10 (explaining the three-part test set out in *Duren v. Missouri*, 439 U.S. 357, 364 (1979) to establish a  
11 prima facie violation of the fair cross-section requirement); *Hernandez-Estrada*, 749 F.3d at 1167  
12 (“[S]tatistical proof of underrepresentation does not end the inquiry in equal protection cases. The  
13 challenging party must also establish discriminatory intent . . .”).

14 Accordingly, it is hereby **ORDERED** that within two weeks of this Order the Clerk of the  
15 Federal District Court, Northern District of California, shall transmit to the parties in this case  
16 copies of any of the Court’s records pertinent to the composition of the Grand Jury which indicted  
17 H. Cervantes, Alberto Larez, Jaime Cervantes, and Andrew Cervantes on September 17, 2015 in a  
18 Third Superseding Indictment (Dkt. No. 724).

19 It is further **ORDERED** that the parties in this case shall not use any documents released or  
20 provided to them by the Clerk of this Court pursuant to this Order for any purpose other than to  
21 prepare and, if necessary, litigate a jury composition challenge in this case.

22 This Order terminates Docket No. 741.

23 **IT IS SO ORDERED.**

24  
25 Dated: November 6, 2015

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT JUDGE